



**STATE OF NEW JERSEY**

In the Matter of Johann Portes,  
Police Officer (S9999U), Jersey City

**FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION**

CSC Docket No. 2019-3051

List Removal Appeal

**ISSUED: NOVEMBER 8, 2019 (SLK)**

Johann Portes, represented by Anthony R. Troise, Esq., appeals his removal from the eligible list for Police Officer (S9999U), Jersey City based on an unsatisfactory background report.

The appellant took the open competitive examination for Police Officer (S9999U), which had an August 31, 2016 closing date, achieved a passing score, and was ranked on the subsequent eligible list. In seeking his removal, the appointing authority indicated that the appellant had an unsatisfactory background report. Specifically, the appointing authority's background report indicated that the appellant was arrested on July 12, 2017 for possession of CDS and pled guilty to possession of CDS Marijuana, a disorderly persons offense. His arrest also led directly to the issuance of a court-authorized search warrant that resulted in additional arrests and the recovery of additional drug evidence as well as a loaded Glock Handgun and \$46,720 in suspected drug proceeds. Additionally, the appointing authority indicated that the appellant falsified his application by failing to disclose four motor vehicle violations and three motor vehicle accidents.

On appeal, the appellant asserts that the only potential issue in his past that may be considered adverse to the position sought was his 2017 disorderly persons offense. He presents that this incident only led to him paying a fine and he was not sentenced to prison or community service. The appellant argues that he has demonstrated sufficient rehabilitation as he has avoided subsequent arrests, has

been employed for nearly four years by Delta Airlines, volunteers within the community, and is a father of a two-year old son.

In response, the appointing authority, represented by James B. Johnston, Assistant Corporation Counsel, relies on its background report.

In reply, the appellant states that he did not understand the question on the application pertaining to motor vehicle violations. He explains that he thought the question was only asking about moving violations and the violations on his driver's abstract carried zero points and he did not intentionally omit information. The appellant asserts that he is a safe driver. Further, the appellant did list his most recent motor vehicle accident, which took place in November 2017, but he mistakenly forgot about accidents that took place over six years ago in 2011, 2012, and 2013. He indicates that in two of the three accidents, the other driver was at fault and no one was injured in any accident.

In further response, the appointing authority contends that its question concerning motor vehicle violations was simple and unambiguous. It presents that the appellant was asked "Have you ever received a summons for a violation of the Motor Vehicle Laws in this or any other state? (Excluding parking violations)" and he responded, "No," and did not list the motor vehicle violations on his driver's abstract. Further, the appellant was asked, "Have you ever been involved in any motor vehicle accident/crashed as a registered owner or operator." The appellant only indicated that he was involved in a "minor accident" on November 16, 2017 and did not list the other accidents on his driver's abstract. Additionally, it asserts that if the appellant was confused or mistaken, this demonstrates his inability to follow orders as a Police Officer. Concerning his arrest, it argues that it demonstrates that the appellant lacks respect for the law and does not possess the good judgment to be a Police Officer by associating with an alleged drug trafficker.

## CONCLUSION

*N.J.S.A.* 11A:4-11 and *N.J.A.C.* 4A:4-4.7(a)4 provide that an eligible's name may be removed from an eligible list when an eligible has a criminal record which includes a conviction for a crime which adversely relates to the employment sought. The following factors may be considered in such determination:

- a. Nature and seriousness of the crime;
- b. Circumstances under which the crime occurred;
- c. Date of the crime and age of the eligible when the crime was committed;
- d. Whether the crime was an isolated event; and
- e. Evidence of rehabilitation.

*N.J.A.C.* 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)9, allows the Civil Service Commission (Commission) to remove an eligible's name from an eligible list for other sufficient reasons. Removal for other sufficient reasons includes, but is not limited to, a consideration that based on a candidate's background and recognizing the nature of the position at issue, a person should not be eligible for appointment.

*N.J.A.C.* 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)6, allows the Commission to remove an eligible's name from an employment list when he or she has made a false statement of any material fact or attempted any deception or fraud in any part of the selection or appointment process.

*N.J.A.C.* 4A:4-6.3(b) provides that the appellant has the burden of proof to show by a preponderance of the evidence that an appointing authority's decision to remove his or her name from an eligible list was in error.

In this matter, the appointing authority had valid reasons for removing the appellant's name from the list. Specifically, the appellant was arrested for multiple possession of drug charges in July 2017 and he pled guilty to possession of CDS Marijuana, a disorderly persons offense. Further, the circumstances surrounding this incident were serious as his arrest led directly to the issuance of a court-authorized search warrant that resulted in additional arrests and the recovery of additional drug evidence as well as a loaded Glock Handgun and \$46,720 in suspected drug proceeds. Although the appellant's conviction was for a disorderly persons offense and cannot give rise to the disability arising under *N.J.A.C.* 4A:4-4.7(a)4, the fact that the appellant was involved in such activity reflects upon his character and his ability to perform the duties of the position at issue. *See In the Matter of Joseph McCalla*, Docket No. A-4643-00T2 (App. Div. November 7, 2002). In this regard, it is recognized that a Police Officer is a law enforcement employee who must help keep order in the prisons and promote adherence to the law. Police Officers hold highly visible and sensitive positions within the community and the standard for an applicant includes good character and an image of utmost confidence and trust. *See Moorestown v. Armstrong*, 89 *N.J. Super.* 560 (App. Div. 1965), *cert. denied*, 47 *N.J.* 80 (1966). *See also In re Phillips*, 117 *N.J.* 567 (1990). The public expects Police Officers to present a personal background that exhibits respect for the law and rules. Moreover, as this incident took place after the closing date, there was insufficient time for the appellant to demonstrate rehabilitation.

Additionally, the appellant failed to disclose four motor vehicle violations and three accidents. The appellant explains that he did not understand that the question related to motor vehicle violations also concerned non-moving violations. Further, he states that he forgot about prior accidents and had no intention of omitting information. The Appellate Division of the New Jersey Superior Court, in *In the Matter of Nicholas D'Alessio*, Docket No. A-3901-01T3 (App. Div. September 2, 2003),

affirmed the removal of a candidate's name based on his falsification of his employment application and noted that the primary inquiry in such a case is whether the candidate withheld information that was material to the position sought, not whether there was any intent to deceive on the part of the applicant. A review of the application indicates that the appellant was asked about violations of motor vehicle laws and there was nothing in the question that limited the requested information to only moving violations. Therefore, the appellant's explanation that he answered "No" because he only thought this question was referring to moving violations is not persuasive. Moreover, concerning the appellant's statement that he unintentionally forgot accidents that took place over six years, the appellant is responsible for the accuracy of his application. *See In the Matter of Harry Hunter* (MSB, decided December 1, 2004). Even if there was no intent to deceive, in light of the appellant's multiple motor vehicle violations, multiple motor vehicle accidents and the above-mentioned incident, his failure to disclose this information was material. At minimum, the appointing authority needed this information to have a complete understanding of his background in order to properly evaluate his candidacy.

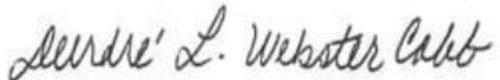
Accordingly, the appellant has not met his burden of proof in this matter and the appointing authority has shown sufficient cause for removing his name from the Police Officer (S9999U), Jersey City eligible list.

### **ORDER**

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 6<sup>th</sup> DAY OF NOVEMBER, 2019



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